

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

ROBERT WAYNE BLEVINS, #1198449	§	
	§	
v.	§	CIVIL ACTION NO. G-07-172
	§	
NATHANIEL QUARTERMAN	§	
DIRECTOR, TDCJ-CID	§	

**REPORT AND RECOMMENDATION**

Before the Court is the Petition for a Writ of Habeas Corpus of Robert Wayne Blevins, a prisoner in the Texas Department of Criminal Justice - Correctional Institutions Division (“TDCJ-CID”) (Instrument No. 1). The Court has jurisdiction over the parties and subject matter pursuant to 28 U.S.C. §§ 2241 and 2254. Petitioner attacks the judgments and sentences entered by the 23<sup>rd</sup> Judicial District Court of Brazoria County, Texas in Cause Numbers 41,486 (aggravated robbery), 41,487 (aggravated sexual assault), and 41,488 (aggravated kidnaping). On September 12, 2003, Petitioner was found guilty by a jury of the offenses and was sentenced to 60 years, 50 years, and 25 years imprisonment in the TDCJ-CID. Petitioner’s convictions were upheld on appeal on August 11, 2005. Petitioner alleges that his Petitions for Discretionary Review (“PDR”) were denied on December 21, 2005, however, taking judicial notice of the Texas Court of Criminal Appeals’ (“TCCA”) records, the Court finds a PDR was not, in fact, filed in any of these cases. *Blevins v. State*, PDR Nos. 1450-05; 1451-05; 1452-05.

On February 14, 2007, Petitioner filed state writs of habeas corpus pursuant to Article 11.07 of the Texas Code of Criminal Procedure on the claims raised here. He states that the Court of Criminal Appeals has not yet adjudicated these issues. (Fed. Writ Pet. at 3-4). The Antiterrorism

and Effective Death Penalty Act (“AEDPA”) requires a prisoner to exhaust his state remedies before seeking federal habeas relief. 28 U.S.C. § 2254(b)(1). Since the habeas claims raised here have not been exhausted, they are barred from consideration at this time.

Having conducted a preliminary review of the instant Petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Court **RECOMMENDS** the Petition for a Writ of Habeas Corpus of Robert Wayne Blevins (Instrument No. 1) be **DISMISSED WITHOUT PREJUDICE for the failure to exhaust state remedies.**

The Clerk **SHALL** send copies of this Report and Recommendation to the Parties. The Parties **SHALL** have until **April 20, 2007**, to have written objections, filed pursuant to 28 U.S.C. § 636(b)(1)(C), **physically on file** in the Office of the Clerk. The Objections **SHALL** be electronically filed and/or mailed to the Clerk’s Office at P.O. Drawer 2300, Galveston, Texas 77553. Any Objections filed **SHALL** be contained in a written document specifically entitled “Objections to the Report and Recommendation of the Magistrate Judge”, which will then be forwarded to the District Judge for consideration. Failure to file written objections within the prescribed time **SHALL** bar the aggrieved party from attacking on appeal the factual findings and legal conclusions accepted by the District Judge, except upon grounds of plain error.

**DONE** at Galveston, Texas this 2nd day of April, 2007.

  
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John R. Froeschner  
United States Magistrate Judge